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No. 510

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

MARVIN L. PICKERING,

Appellant,

vs.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY, ILLINOIS,

Appellee.

Appeal from the Supreme Court of Illinois.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, ILLINOIS DIVISION, AMICUS CURIAE

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INTEREST OF AMICUS

The American Civil Liberties Union, Illinois Division, which files this brief with the consent of the parties,* believes that the case at bar raises fundamental First and Fourteenth Amendment questions. The central issues are whether a public school teacher can be fired for criticizing the official actions of his School Board, and whether the Board can act as complainant, prosecutor, judge, and jury in the statutory proceedings required to discharge him.

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* Letters of consent have been filed with the Clerk of the Court.

STATEMENT OF THE CASE

Marvin L. Pickering, a tenured teacher at the Lockport Illinois East High School, wrote a letter to the editor of a local newspaper, the *Lockport Herald*. In it he discussed the history and merits of several school building proposals put forward by the School Board in the preceding two years. The substance of the letter is treated at length in Mr. Pickering's brief in this Court and in the majority and dissenting opinions in the Illinois Supreme Court. The history, substance and outcome of the various proposals to build new school facilities are complex. Pickering's letter was prompted by the last of these, a proposed tax-rate increase.

To promote its proposals the Board had hired a public relations firm, (T. 269-70, Abst. 77),* and published extensive press releases and pamphlets. (Pl. Ex. 3, T. 251, Abst. 74, Abst. II, 17; Pl. Ex. 4, T. 258, Abst. 75, Abst. II 22; Pl. Ex. 5, T. 267, Abst. 77, Abst. II, 26; Pl. Ex. 6, T. 271, Abst. 77, Abst. II, 30) Teachers were urged to distribute promotional literature to voters (T. 438, Abst. 99). The local teachers' organization had also supported the tax-rate increase in a series of articles which had been approved by the Superintendent and appeared in the *Lockport Herald* in the weeks preceding the election. (Def. Ex. 27, T. 190, Abst. 63, Abst. II 9) On September 19, 1964 the voters rejected the proposal. On September 22, 1964, Mr. Pickering submitted his letter to the editor, and on September 24th it was published.

The letter explained the voters' action as part of "a fight between the Board of Education that is trying to

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* R. refers to the Record; Abst. refers to Volume 1 of the Abstract unless otherwise indicated. T. refers to the Transcript.

push tax-supported athletics down our throats with education, and a public that has mixed emotions about both of these items because they feel they are already paying enough taxes, and simply don't know whom to trust with any more tax money." (R. 10, Abst. 40, Abst. 11, 14) Mr. Pickering attempted to illustrate the causes of the public feeling which defeated the tax-rate increase by reviewing discrepancies between what the Board had promised in prior proposals and the facilities actually built when one of the prior proposals was approved.

The Board took great offense to the letter. Charges against him were prepared at an informal meeting of Board members and the Superintendent. (T. 341-345, Abst. 86-87) Although Mr. Pickering had taught for five years without incident, on October 8, 1964 the Board adopted a resolution discharging him. As grounds for dismissal, the Board charged that his letter "contained many untrue and false statements and comments which . . . impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education and the School Administrators of this District. . . ." The Board also charged that the letter would "tend to foment controversy, conflict and dissension among them and jeopardize the welfare of the schools of this District." (R. 12, Abst. 9, 10).

Under Illinois Law Mr. Pickering was entitled to a hearing before the Board and he requested it. At the hearing Mr. Louis Bertani acted both as prosecutor and as legal advisor to the Board (T. 5, Abst. 39) Testimony was heard and the Board members concluded that the charges they had formulated were, in fact, true. They also concluded that the charges were not "remediable"—a statutory requirement if Mr. Pickering was to be dis-

charged. (Ill. Rev. Stat. 1963, chap. 122, par. 24-12). The record shows that no evidence was offered or received (1) that the charges were not remediable, (2) that any effort was made to seek a retraction or other remedy, or (3) that the letter tended "to foment controversy, conflict and dissension . . . and jeopardize the welfare of the schools of this District."

The Board was the first and last tribunal to hold a fact-finding hearing in the Pickering case. The Circuit Court reviewed the record before the Board under the Illinois Administrative Procedure Act, (Ill. Rev. Stat. 1963, chap. 110, par. 264), and found that the Board's decision was not "manifestly against the weight of the evidence." (R. 68, Abst. 34). The Illinois Supreme Court reviewed the Circuit Court decision and concluded, in a five-two decision, that "the decision to dismiss the plaintiff was not against the manifest weight of the evidence." *Pickering* v. *Board of Education of Township High School Dist. No. 205,* 36 Ill. 2d 568, 225 N.E.2d 1, 7 (1967). Without setting standards to govern future cases, a majority of the Illinois Supreme Court found that Mr. Pickering's letter was sufficiently false and misleading to justify his discharge. Justice Schaefer dissented in an extensive opinion which was joined by Mr. Chief Justice Solfisburg. The dissenting opinion analyzed each statement in the letter, compared each statement with the record, and concluded that "the letter is substantially accurate." Marvin Pickering has brought the case to this Court.

ARGUMENT

I.

THE SCHOOL BOARD VIOLATED MARVIN PICKERING'S CONSTITUTIONAL RIGHTS BY DISMISSING HIM UNDER STANDARDS WHICH ARE VOID FOR VAGUENESS, AND BY DISMISSING HIM FOR EXERCISING THE FREEDOM OF SPEECH GUARANTEED ALL CITIZENS.

This Court will find Marvin Pickering's statement was substantially true. Any inaccuracies it contained were the result of reasonable and innocent mistakes. And on some questions Mr. Pickering's statement was more accurate than public statements by the School Board and the Superintendent. These conclusions are unmistakable from a review of Mr. Pickering's brief and of Justice Schaefer's dissenting opinion in the Illinois Supreme Court.

But if the Court has any doubt it must make its own review of the facts or remand the case for an independent review. It cannot rely upon the facts as found by the School Board since the Board was interested in vindicating itself, not affording a fair hearing. By occupying the inconsistent roles of complaining witness, prosecutor, judge and jury, it denied Mr. Pickering a hearing that complied with due process. (See Part II, *infra*). And the review of its action in the Circuit Court was of no value as a fact-finding proceeding since the Board's findings were deemed *prima facie* true and correct, (Ill. Rev. Stat. 1963, chap. 110, par. 274) and review was limited to the question of whether the Board's decision "is without substantial foundation in the record or is manifestly

against the weight of the evidence." (R. 68, Abst. 34). The majority opinion in the Illinois Supreme Court limited its review to the same questions. (36 Ill. 2d 578, 225 N.E. 2d at 6-7). This Court has recognized that when a Constitutional right is at stake it will make an independent review of the facts of a case. See cases cited in *Jacobellis* v. *Ohio*, 378 U.S. 184, 189 (1964).

a. The Standard Applied Was Unconstitutionally Vague.

As recently as *Keyishian* v. *Board of Regents of the University of the State of New York*, 385 U.S. 589, 603-04 (1967), this Court reiterated the substantial public interest in assuring teachers the right to freedom of speech. In *Keyishian* the Court held the New York "Feinberg" Law unconstitutional because the law, which prohibited the employment of "subversive" teachers, was so vague as to "chill" the exercise of vital First Amendment rights. "We emphasize once again that '[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms, *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438; [f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. *Id.* at 432-433. . . . When one must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone. . . .' *Speiser* v. *Randall*, 357 U.S. 513, 526. For '[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions.' *N.A.A.C.P.* v. *Button*, *supra*, at 433. The danger of that chilling effect upon the exercise of vital First Amendment

rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed. See *Stromberg* v. *California,* 283 U.S. 359, 369; *Cramp* v. *Board of Public Instruction,* 368 U.S. 278; *Baggett* v. *Bullitt,* [377 U.S. 360]."

Here, in full, are the "standards" used in the present case. These standards now govern the freedom of speech of Illinois teachers:

(1) The statute which the Board relied upon authorized it to dismiss a teacher "whenever, in its opinion, the interest of the schools require it. . . ." (Ill. Rev. Stat. 1963, chap. 122, par. 10-22.4)

(2) The majority opinion in the Illinois Supreme Court interpreted "the interest of the schools" to mean the Board can discharge a teacher when (a) he "publishes misleading statements which are reasonably believed to be detrimental to the schools" or (b) his "conduct is detrimental to the efficient operation and administration of the schools," or (c) "a teacher . . . displays disrespect toward the Board of Education, incites misunderstanding and distrust of its policies, and makes unsupported accusations against the officials. . . ." (36 Ill. 2d at 577-78, 225 N.E. 2d at 6).

Such standards lack the "narrow specificity" which this Court requires when the government regulates First Amendment rights. A teacher must wonder whether keeping a child after the end of a class period or assigning extra homework "is detrimental to the efficient operation and administration of the Schools," or whether stating that the school needs more laboratories or athletic facilities "displays disrespect toward the Board of Education." A teacher will also note that the standards do not excuse innocent or even accidental misstatements.

The danger of speaking out is compounded when one compares the standards used in the present case with the evidence actually introduced. For the record contains no evidence of any "detrimental" effect upon the operation of the schools, and Mr. Pickering's statement was both supported by examples and substantially true.

b. Teachers are Entitled To The Same Freedom of Expression Enjoyed by Other Citizens.

Whether or not the standards employed in this case were too vague, they were unconstitutional. In the Illinois Supreme Court and in this Court Marvin Pickering has argued that a teacher is entitled to the same freedom of speech guaranteed other citizens by *New York Time Co.* v. *Sullivan,* 376 U.S. 254 (1964), and *Garrison* v. *Louisiana,* 379 U.S. 64 (1964). Both cases held that the Constitution prohibits civil or criminal sanctions upon individuals who criticize the official conduct of public officials, unless the criticism is made with actual malice or reckless disregard of the truth. The Illinois Supreme Court rejected that standard in the present case because "the plaintiff here is not a mere member of the public. . . . By choosing to teach in the public schools, plaintiff undertook to refrain from conduct which in the absence of such position he would have an undoubted right to engage in." (36 Ill. 2d at 577, 225 N.E. 2d at 6).

This Court's holding in the *Keyishian* case, *supra;* is exactly opposite. There the Court expressly rejected the "premise . . . that public employment, including academic employment, may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." (385 U.S. at 605-06). This error alone requires reversal, for no effort was made—

or could successfully be made—to show that Mr. Pickering acted with malice or reckless disregard of the truth.

The Illinois Supreme Court decision is also inconsistent with state court decisions which recognize the right of public employees to exercise their freedom of speech so long as the speech does not actually impair governmental functions. *See, e.g., Board of Trustees* v. *Owens,* 206 Cal. App.2d 147, 162-63, 23 Cal. Rptr. 710 (1962); *Brickman* v. *New Orleans Aviation Board,* 236 La. 143, 166-67, 107 So.2d 422 (1958); *Adams* v. *State,* 69 So.2d 309 (Fla. 1954); *City of St. Petersburg* v. *Pfeiffer,* 52 So.2d 796 (Fla. 1951). This Court is not called upon to adopt or reject those cases, however, for under any theory Mr. Pickering could not be discharged. The record in the present case contains no evidence that Mr. Pickering's letter caused disruption of any educational services. And any possibility of disruption due to contact and friction between Mr. Pickering and the Board would be very unlikely since Mr. Pickering spent all his professional time in classroom teaching.

It would be anomalous and ironic if the Constitution did not require a school board to tolerate criticism from a teacher. Section 8(c) of the National Labor Relations Act, 61 Stat. 136, 142 (1947), 29 U.S.C. §158(c) (1964 ed.), recognizes that private employers bear the same duty to tolerate the free exchange of critcism as *New York Times Co.* v. *Sullivan* requires public officials to bear. The NLRA, like the *New York Times* case, prohibits discharging an employee for statements made about his employer, unless made with actual malice. See *Linn* v. *United Plant Guard Workers,* 383 U. S. 53, 60-61 (1966). Just as the NLRA protects the employee in the private sector from discharge by his private employer, so the rationale of *New York*

Times protects the employee like Mr. Pickering from discharge by his criticized employer, the public official.

The irony of a suggestion that the Constitution requires less of public officials is heightened by the fact that a teacher occupies an especially sensitive position from which he can contribute to the public's knowledge of the schools and their needs. In *Adler* v. *Board of Education,* 342 U.S. 485, 493 (1952), overruled by the *Keyishian* case and others, this Court predicated the restrictions it allowed the states to impose upon teachers' freedoms upon the basis that "a teacher works in a sensitive area in a school room. There he shapes the attitudes of young minds toward the society in which they live. In this the state has a vital concern." Although we are well rid of the restrictions, the point remains valid in the present context. For a teacher like Mr. Pickering to withhold his views on the welfare of the schools and their pupils would deprive the public of valuable and unique perspectives. But if the Illinois Supreme Court decision stands, teachers will be seriously discouraged from speaking out, and our school systems and their pupils will be the real losers.

II.

DUE PROCESS PROHIBITS THE SCHOOL BOARD FROM ACTING AS COMPLAINANT, PROSECUTOR, JUDGE AND JURY.

Marvin Pickering was accused, prosecuted, judged, convicted and discharged by the School Board he had offended. Although the majority opinion in the Illinois Supreme Court did not discuss the propriety of that procedure, Justice Schaefer in his dissent concluded that "A legislative system which, as in this case, casts them [School Board members] in the role of aggrieved victims who formulate, prosecute and punish charges based on

their grievances is not, in my opinion, compatible with present standards of due process" (36 Ill. 2d at 585, 225 N.E. 2d at 10). The great danger that School Board members will act unfairly when they have an interest in the case they judge is borne out in the present case by the following examples.

(1) Illinois statute (Ill. Rev. Stat. 1963, chap. 122, par. 24-12) required the School Board to hold a hearing to determine whether there was proper cause to fire Mr. Pickering. At the hearing Mr. Louis Bertani acted both as legal advisor to the Board and as prosecutor of the charges against Mr. Pickering (T. 5, Abst. 39). The record shows fifteen disputes between Mr. Bertani and Mr. Ligtenberg, Mr. Pickering's attorney, over the admissibility of evidence or the disposition of motions. In each case the Board ruled for Mr. Bertani and against Mr. Pickering's attorney (T. 6-7, 257-58, 289, 295, 302, 313, 357-58, 361-67, 464-65, 476, 565-66, 595; Abst. 40, 75, 79, 80, 81, 84, 88, 89, 104, 107, 122, 126). Those rulings, for example, prevented Mr. Ligtenberg from showing the truth of Mr. Pickering's statements that the Board had sodded the football field with borrowed funds (T. 357-59, Abst. 88) and might not be able to pay teachers' salaries (T. 295, Abst. 80).

(2) The Board's charges against Mr. Pickering included disrupting "the discipline of the teachers and morale and harmony among Teachers, Administrators and Board" (R. 12, Abst. 10). Although the Board found him guilty as it had charged (R. 32-33, Abst. 27), and found the charges to be "true, fully proven and supported by the evidence," no proof of any disruptive effect was introduced at the hearing, and there is none in the record.

(3) To justify discharging Mr. Pickering the Board was required by Illinois statute (Ill. Rev. Stat. 1963, chap.

122, par. 24-12) to find the charges against him were not "remediable." Again, no evidence of the remediable or irremediable character of the charges was introduced at the hearing or appears elsewhere in the record.

No reason other than prejudgment can account for the uniform and erroneous rulings against Mr. Ligtenberg's efforts to develop evidence on clearly relevant issues. And the Board's failure to receive any evidence of record on the disruptive effect of Mr. Pickering's letter or on the remediable character of the charges means either that the Board had made up its mind on such questions before the hearing, or that it relied upon secret and uncontested testimony.

This Court has recognized that the sort of prejudice which occurred in the present case results whenever a tribunal judges a person against whom it has an adverse interest. The Court has held that such proceedings violate due process.

In *Tumey* v. *Ohio,* 273 U.S. 510 (1927), for example, the Court held that due process was violated when a Mayor tried a defendant in a case in which the Mayor had an interest directly adverse to the defendant. The Mayor received compensation for his expenses only out of fines collected from the defendant, and the Mayor's village also received substantial revenues from the fines. The Court held that "a situation in which an official perforce occupies two practically and serious inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him" (273 U.S. at 534).

In subsequent cases the Court has stated that whether the judge is adversely interested depends upon the "circumstances and relationships" of the judge and defendant.

In *In re Murchison*, 349 U.S. 133 (1955), the Court held that due process was violated by a Michigan law which permitted a single judge to act as a grand jury and then try the man he had indicted. The Court stated that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered" (349 U.S. at 136).

This Court has frequently held that the requirements of procedural due process apply to quasi-judicial administrative proceedings. In *Morgan* v. *United States*, 304 U.S. 1 (1938), the Court held that the "rudimentary requirements of fair play" were violated when the Secretary of Agriculture set certain rates without giving the affected parties any notice of the Government's positions or an opportunity to contest them. The Court held that "in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a 'fair and open hearing'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard' . . . And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a *'full hearing'*" (304 U.S. at 14-15). *Accord, Railroad Comm. of California* v. *Pacific Gas and Electric Company*, 302 U.S. 388, 393 (1938); *Ohio Bell Telephone Company* v. *Public Utilities Comm.*, 301 U.S. 292, 304-05 (1937).

These cases make clear that the proceedings in the present case violate due process. Here the School Board's interest was more adverse than that of the judge who might have hoped to collect part of the small fine levied in the *Tumey* case. The Board members were outraged because, as they stated in their charges, Mr. Pickering had "questioned and impugned the motives, honesty, integrity, truthfulness, responsibility and competence of this Board of Education" (R. 12, Abst. 10).

The *Morgan* case required that a party to a quasi-judicial administrative proceeding be advised of the charges against him and be given an opportunity to defend himself. Yet both of those requirements would be hollow formalities unless the hearing *Morgan* requires occurs before a disinterested judge. In the present case the charges they prepared proved that the Board members were not disinterested. And here the Board not only filled the joint role of complainant and judge condemned in *Murchison*, but also the joint role of prosecutor and judge.

The hearing required by statute in the present case was "quasi-judicial." In an earlier opinion in the *Morgan* case this Court had defined the term as "the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, . . .", *Morgan* v. *United States*, 298 U.S. 468, 480 (1936). The hearing required by statute in this case meets all those requirements. The Board must serve written notice of the charges against the teacher, and the teacher may request a bill of particulars. The teacher is entitled to be represented by counsel, to cross-examine witnesses, to offer evidence and to present defenses to the charges. Witnesses may be subpoenaed, testimony must be taken under oath, and a stenographic

transcript of testimony must be kept (Ill. Rev. Stat. 1963, chap. 122, par. 24-12). Moreover, the Illinois Courts have held that "the hearing afforded by the statute is supposed to be a fair and impartial hearing. The administrative agency does not represent one party against the other. . . ." *Lusk* v. *Community Consolidated School Dist. No. 95*, 20 Ill. App. 2d 252, 258, 155 N.E. 2d 650 (2nd Dist. 1959). *Morgan* and other cases in accord with it require that such a quasi-judicial proceeding meet the requirements of procedural due process.

The due process which this Court has required in administrative proceedings is now guaranteed parties appearing before federal agencies by the Administrative Procedure Act (60 Stat. 237, 240 (1946), 5 U.S.C.A. sec. 554(d)). Section 5(c) of the Act provides that "an employee or agent engaged in the performance of investigative or prosecuting functions for any agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision or agency review. . . ." And the hearing officer may not be subject to the control of anyone who investigated or prosecuted the case.

A number of State courts have recognized that the constitutional requirement of an impartial tribunal in quasi-judicial proceedings applies to hearings before school boards. In *Mackler* v. *Board of Education of the City of Camden*, 16 N.J. 362, 108 A. 2d 854, 856-57 (1954), the Court stated: "The making of a complaint does not disqualify a board member where its making is a formality of office and no personal interest is shown, . . . , but where private interest at variance with impartial performance is shown there is disqualification . . . , and likewise malice or ill-will cause disqualification. . . . The danger that must be guarded against is a concentration of inquisitional,

prosecution and judicial powers, to be the end that there may be impartiality of judgment."

In *Osborne* v. *Bullitt County Board of Education*, ... Ky. ....., 415 S.W. 2d 607, 610 (1967) the Court held that a teacher discharged for insubordination had been denied procedural due process. "We are deeply concerned with the procedure which requires a teacher to submit to a trial at the hands of the school board, the members of which wear three hats, the hat of the employer, the hat of the prosecutor, and the hat of the trier." The Court overruled an earlier case which limited judicial review to an examination of the record for evidence of arbitrariness by the Board. Instead, it required a trial *de novo* of the entire case in a Kentucky trial court.

In *Miller* v. *Board of Education of District No. 132*, 51 Ill. App. 2d 20, 21, 200 N.E. 2d 838 (1st Dist. 1964), an Illinois intermediate appellate court held that a teacher discharged after a hearing by the School Board "was prevented from having a fair trial by the multiple capacities in which the School Board and its attorney were functioning." As in the present case, the Board's attorney was both prosecutor and legal adviser. The Illinois Supreme Court did not discuss the *Miller* case in its decision in *Pickering*.

Some State cases permit School Board members to exercise mixed functions in deciding whether to discharge teacher. In *Moran* v. *School Committee of Littleton*, 317 Mass. 591, 59 N.E. 2d 279, 280-81 (1945), the Court sustained a proceeding in which two members of a three member school board acted both as witnesses against a school principal and as judges. The only reason given for allowing the members of the Board to participate in the decision was that: "A member of an administrative

board who is biased or prejudiced against one on trial before the board is not required to withdraw from the hearing if no other board can hear and determine the matter, especially if his withdrawal would deprive the board of the number of members required to take a valid affirmative vote. This rule is based on necessity and is designed to enable the board to exercise its power where it might otherwise be barred from doing so on account of the bias, interest or prejudice of its members."

Professor Kenneth Davis has written that "perhaps the aspect of the law about bias that is most in need of critical reexamination is the application of the rule of necessity." 2 Davis, *Administrative Law,* sec. 12.06, at 169 (1958). And "the easy and seemingly automatic application of the rule of necessity is more dangerous than is recognized in typical judicial opinions, for grave injustice may result from allowing disqualified officers to adjudicate cases." *Id.*, sec. 12.04, at 164. Justice Schaefer in his dissenting opinion in the present case thought a procedure which cast the Board members in the role of complaining witness, prosecutor, judge and jury was not necessary, "for charges of this sort could readily be heard and determined by the County Board of School Trustees, the County Superintendent of Schools, or the Superintendent of Public Instruction" (36 Ill. 2d at 585, 225 N.E. 2d at 10). Thus, the only rationale which can be offered to support the procedure used here is inconsistent with the protections which this Court has afforded parties in administrative and judicial hearings, and has been roundly condemned.

When the Board accused, prosecuted, judged, convicted and discharged Marvin Pickering, it violated due process. The judgment should be reversed.

CONCLUSION

After five years of teaching Marvin Pickering was fired because he criticized the School Board. The standard under which he was discharged would, if sustained, allow a school board unconstitutionally broad discretion to discharge teachers, and would have a chilling effect upon teachers' freedom of speech. Teachers would have far less freedom of speech than other citizens. Such a result would be contrary to the whole trend of Supreme Court decisions guaranteeing the freedom of expression of this important group of citizens.

The procedure followed in this case, whereby the School Board acted in inconsistent capacities and with interests adverse to Mr. Pickering's, violated well-established principles of due process. If such procedures are allowed, they, too, will have a chilling effect upon teachers' freedom of expression.

For these reasons the decision of the Board of Education should be reversed, and Marvin Pickering should be ordered reinstated.

Respectfully submitted,

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